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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WAYNE BROWN, JOSEPH HERBERT MCINTYRE,
MICHAEL PAOLINI, JAMES MARK WEAVER,
and SCOTT LEE WINTERS

Appeal 2007-3043
Application 10/022,624
Technology Center 2600

Decided: February 29, 2008

Before MAHSHID D. SAADAT, JOHN A. JEFFERY,
and MARC S. HOFF, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1-33 and 35-47.¹ We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellants indicate in the Communication of July 24, 2003 that claim 34 does not exist due to a clerical error.

Appellants' claimed invention relates to a method and system for logging calls according to the context of the calls (Spec. 6). According to Appellants, after a context for a call is detected, one context based logging request is accessed from among multiple requests stored and the context is logged according to the request (*id.*).

Claim 1 is illustrative of the invention and reads as follows:

1. A method for controlling call logging, comprising:

detecting a context for a call;

accessing at least one context based logging request valid for said context for said call; and

logging said context according to said context based logging request.

The Examiner relies on the following prior art reference:

Maloney	US 5,535,256	Jul. 9, 1996
Gurbani	US 6,282,275 B1	Aug. 28, 2001
Shaffer	US 6,363,145 B1	Mar. 26, 2002
		(filed Aug. 17, 1998)

Claims 1, 2, 4-8, 11-17, 19-23, 26-32, and 36-47 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gurbani.

Claims 1, 3, 4, 16, 18, 19, 31, and 32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Shaffer.

Claims 1, 9, 10, 16, 24, 25, 31, 33, 35, 41, 44, and 47 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Maloney.

Throughout the opinion, we make reference to the Amended Brief (received September 13, 2006), Reply Brief (received June 20, 2005),

and the Supplemental Answer (mailed November 29, 2006) for the respective details thereof. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed waived. See 37 C.F.R. § 41.37(c)(1)(vii).

We affirm.

ISSUE

Under 35 U.S.C § 102(e), does each of Gurbani, Shaffer, or Maloney have a disclosure which anticipates the invention set forth in claims 1-33 and 35-47?

PRINCIPLES OF LAW

1. Scope of claims

“[T]he words of a claim ‘are generally given their ordinary and customary meaning.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Further, “the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question.” *Id.* at 1313. Specification is the single best guide to the meaning of a claim term. *Id.* at 1315.

2. Anticipation

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” See *In re Buszard*, 504 F.3d 1364, 1366 (Fed. Cir. 2007)

(quoting *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)).

Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

3. *Enablement of the prior art*

“In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method.” *Beakman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551 (Fed. Cir. 1989). To be enabling, the disclosure in question must teach those of skill in the art “how to make and how to use the invention as broadly as it is claimed.” *In re Vaeck*, 947 F.2d 488, 496 (Fed. Cir. 1991). With respect to the prior art printed publications, these references must be enabling, thus placing the allegedly disclosed matter in the possession of the public. *Akzo N.V. v. United States In 'l Trade Comm 'n*, 808 F. 2d 1471, 1479 (Fed. Cir. 1986). Prior art references are presumed to be enabling. *In re Sasse*, 629 F.2d 675, 681 (CCPA 1980).

ANALYSIS

35 U.S.C. § 102 rejection over Gurbani

Appellants contend (App. Br. 6-9; Reply Br. 2) that, in contrast to the requirements of independent claim 1, Gurbani discloses listing every call received by a subscriber regardless of the context of the call. Appellants argue that Gurbani does not teach context based logging requests, valid

context based logging requests, or invalid context based logging requests (*id.*).

In determining the meaning of the term “context,” the Examiner relies on the Webster’s Dictionary definition of “the interrelated conditions in which something exists or occurs,” and finds that the disclosure in page 10 of Appellants’ Specification provides the identity of a caller or callee as examples of the context (Ans. 17). The Examiner further disagrees with Appellants’ argument that Gurbani lists all the calls and points out that Gurbani logs a caller ID when a caller ID is detected, and when a logging request is valid (Ans. 18).

After reviewing the disclosure of Gurbani in light of the arguments of record, we generally agree with the Examiner’s position as stated in the Answer and find that the reference teaches receiving caller identification information which is time-stamped to log-in and store in the server (col. 2, ll. 59-63). As shown in Figure 2A, Gurbani retrieves the information regarding the calls based on the caller ID information for each subscriber stored in the caller ID server (col. 3, ll. 20-23). Gurbani further teaches “logging said context” by storing the caller ID and listing the call information such as time, phone number and caller name (col. 3, ll. 39-48).

We also find that Appellants’ Specification defines the claimed term “context” to include information such as the parties to a call, whether a backup party is accessed, where the call is on behalf of another, the locations of the parties to the call, the subject matter of the call, tariffs applied during the call, billing for telephone services accessed during the call and orders placed during the call (Spec. 6). The Specification further describes

“context” to include, inter alia, the identity of the caller or callee, the device identity and owner, the location of the caller and callee, the path of a call, and billing information (Spec. 10). Therefore, to the extent that the claim recites “a context” and “logging said context,” we find that detecting the caller ID and listing the ID along with other call information in Gurbani do teach each of the disputed features in support of a prima facie case of anticipation.

Appellants further argue that Gurbani does not enable Appellants’ claims because the reference does not place one of ordinary skill in the art in possession of claim 1 (App. Br. 9-10). The Examiner asserts that the applied prior art patents are presumed to be valid and to enable the claimed invention as it reads on the disclosure of Gurbani (Ans. 21). We agree with the Examiner and note that Appellants bear the burden of proving that Gurbani is not enabling. As discussed above, the claimed “context” reads on the logging of caller ID in Gurbani, for which Gurbani provides an enabling disclosure.

With respect to claims 2, 4-8, 11-17, 19-23, 26-32, and 36-47, Appellants rely on the same arguments presented for claim 1 (App. Br. 6-12), which are addressed above. Therefore, in view of the above discussions, since Gurbani discloses all of the claimed limitations, we find no error in the Examiner’s rejection of claims 1, 2, 4-8, 11-17, 19-23, 26-32, and 36-47 as being anticipated by Gurbani.

35 U.S.C. § 102 rejection over Shaffer

Appellants contend that Shaffer monitors the actual voice patterns of the callers for automated silent call monitoring where the voice patterns within predetermined time periods are compared to thresholds in order to identify poor customer relations (App. Br. 12-13; Reply Br. 3-4). Appellants argue that Shaffer operates against the spoken words of the call itself, and not the context of the call (App. Br. 13). The Examiner responds by asserting that, based on the description of “context” as the identity of a caller or callee in Appellants’ Specification, the call context is interpreted to include the voice patterns during a call (Ans. 13). The Examiner further argues that the voice patterns such as silence, volume level, and excessive interruptions are monitored in Shaffer, which prompts controlling call logging when such voice patterns are detected (Ans. 19).

Shaffer relates to silent monitoring in an automatic call distributor environment where a supervisor is notified when the voice patterns exceed a threshold (Abstract). Shaffer identifies length of silence, volume, changes in voice frequency, length of conversation, and interruptions as indicators of the quality of the agent’s performance (col. 2, ll. 43-67). We agree with the Examiner’s position that the voice pattern monitored by Shaffer relate to different aspects of the call and the requests for logging these aspects. Shaffer does not monitor what words are spoken, but how they are spoken.

We also find the Examiner’s reliance on Appellants’ own Specification for determining the meaning of the term “context” to be reasonable. As discussed *supra* with respect to Gurbani, pages 6 and 10 of Appellants’ Specification provide examples of what Appellants consider as the context of a call, such as the caller ID and the subject matter of the call.

To the extent claimed, logging of the context according to the request reads on the prior art monitoring of the voice level and audio content of the call which is analogous to the “subject matter of the call,” described by Appellants as the context of a call (Spec. 6, 10).

Appellants further argue that Shaffer does not enable Appellants’ claims because the reference does not place one of ordinary skill in the art in possession of claim 1 (App. Br. 16). As discussed above with respect to Gurbani, the claimed “context” reads on logging of caller ID and the subject matter of the call in Shaffer, for which Shaffer provides an enabling disclosure.

With respect to claims 3, 4, 16, 18, 19, 31, and 32, Appellants rely on the same arguments presented for claim 1 (App. Br. 13-19), which are addressed above. Therefore, in view of the above discussions, since Shaffer discloses all of the claimed limitations, we find no error in the Examiner’s rejection of claims 1, 3, 4, 16, 18, 19, 31, and 32 as being anticipated by Shaffer.

35 U.S.C. § 102 rejection over Maloney

Appellants contend that Maloney records calls according to a predetermined time and not a context for a call (App. Br. 19-20; Reply Br. 4-5). The Examiner relies on Appellants’ Specification describing the “context” to include the identification of the callee (Spec. 10) and responds by arguing that the call recording takes place according to the agent’s extension or context (Ans. 20).

Maloney records calls during predetermined intervals that are later reviewed by a supervisor for evaluating the performance of a call center agent (Abstract). As shown in Figure 2, Maloney provides for a monitoring system wherein the supervisor determines time periods for monitoring the calls and names of call centers to be monitored (col. 4, ll. 25-62). We again agree with the Examiner's interpretation of the term "context" to include the callee identification based on Appellants' disclosure in pages 6 and 10 of the Specification. While a time period for recording is determined, Maloney logs the context by recording the identification of the callee or the call center within each time interval according to a request for monitoring those specific centers.

Appellants further argue that Maloney does not enable Appellants' claims because the reference does not place one of ordinary skill in the art in possession of claim 1 (App. Br. 22-23). As discussed above with respect to Gurbani, the claimed "context" reads on the logging of callee ID within a determined time interval in Maloney, for which Maloney provides an enabling disclosure.

With respect to claims 9, 10, 16, 24, 25, 31, 33, 35, 41, 44, and 47, Appellants rely on the same arguments presented for claim 1 (App. Br. 20-25), which are addressed above. Therefore, in view of the above discussions, since Maloney discloses all of the claimed limitations, we find no error in the Examiner's rejection of claims 1, 9, 10, 16, 24, 25, 31, 33, 35, 41, 44, and 47 as being anticipated by Maloney.

ORDER

The decision of the Examiner rejecting claims 1-33 and 35-47 under 35 U.S.C. § 102 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

Appeal 2007-3043
Application 10/022,624

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INTERNATIONAL CORP (BLF)
c/o BIGGERS & OHANIAN, L.L.P.
P. O. BOX 1469
AUSTIN, TX 78767-1469